

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 27 2000
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In the Matter of)
Public Interest Obligations)
of TV Broadcast Licensees)
)

MM Docket No. 99-360

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To: Commission

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ("Paxson"), by its attorneys, hereby submits these Comments in response to the Commission's *Notice of Inquiry* concerning the public interest obligations of television broadcast licensees (MM Docket No. 99-360). As the owner of the largest broadcast television group in the United States and the creator of the seventh and newest over-the-air broadcast network, PAXTV, Paxson has a vital interest in this proceeding.

Paxson supports the Commission's initiative to examine how the longstanding broadcast public interest standard should be implemented and applied in a digital world. To ensure that the public shares in the benefits resulting from the transition to digital television broadcasting, Paxson urges the Commission to adopt a voluntary Public Interest Code of Conduct for television licensees. This voluntary system would yield demonstrable benefits for the public without abridging broadcasters' First Amendment rights and without unduly taxing the Commission's scarce resources.¹

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¹ The Commission's establishment of the Code presupposes that the Commission has confirmed that television stations have full mandatory carriage rights on multi-channel video programming distributors with respect to their free over-the-air, unduplicated multicast program services and any direct ancillary services contained in the broadcast signal. Without such carriage rights, the Commission simply cannot justify the imposition of increased public interest obligations on licensees whose very ability to serve their local communities is threatened.

Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution to each of the same.”² The Commission consistently has interpreted this provision to require the allocation of television stations to local areas rather than to regional or nationwide areas. Intertwined with this “local” allocation scheme is the Commission’s expectation that broadcasters, in fulfilling their obligation to operate in the public interest, will serve the needs and interests of the local service area. Thus, the Commission has interpreted a television licensee’s public interest obligation as “the diligent, positive, and continuing effort by the licensee to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service.”³

This focus on localism and local service constitutes the very core of the broadcast service and distinguishes free over-the-air broadcasting from other communication services regulated by the Commission. By ensuring a localized broadcast service, the FCC has afforded consumers the ability to receive programming directed toward individual local needs and interests. As a result, local businesses and politicians can communicate with local audiences, who in turn benefit from the dissemination of programming tailored to their local needs and interests, including coverage of timely local news, events, political debates, weather, advertisements, and emergency information, including local EAS warnings.

It is critical that the transition to digital broadcasting yield demonstrable benefits not only to broadcasters, but also to the local communities that thus far have been served well by television broadcasters. At the same time, increased federal regulation of television broadcasting would

² 47 U.S.C. § 301(b).

³ *Report and Statement of Policy re: Commission en banc Programming Inquiry*, 44 FCC 2303, 2316 (1960).

hamper the industry's ability to respond to the challenges of today's highly competitive multichannel marketplace, in which over-the-air broadcasting is just one of many electronic media available to consumers. The Commission instead should seek to establish a private-public partnership that builds on broadcasters' current involvement with their local communities yet still affords broadcasters the flexibility necessary to compete successfully in a rapidly changing world.

In this regard, Paxson notes that the Gore Commission also concluded that public-private initiatives would serve the public interest better than additional governmental oversight of the industry:

[This Commission] has favored, where possible, policy approaches that rely on information disclosures, voluntary self-regulations and economic incentives, as opposed to regulation.

. . .

[H]aving the broadcast industry adopt a strong set of voluntary standards of conduct...would be a highly desirable step toward creating a digital world meeting the needs and interest of the American public.⁴

In short, to promote the goals of a deliberative democracy, the government should rely whenever possible on the least intrusive means, by fostering disclosure of information, encouraging voluntary self regulation and using economic incentives.

Accordingly, Paxson proposes that the television broadcast industry establish a written Public Interest Code of Conduct that licensees could choose to accept or reject voluntarily. In turn, the Commission would afford each station the opportunity in its license renewal application to certify that it in fact adhered to the Code during its license term. A station certifying compliance with the Code would be entitled to a presumption of renewal expectancy, similar to the manner in which the

⁴ *Charting the Digital Broadcasting Future: Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters* at 44, 47 (1998).

Commission currently affords a renewal expectancy to a station airing a weekly average of at least three hours of “core” children’s programming throughout its license term.

No Commission licensee would be required to adhere to the Code. In applying for renewal of its license, a station who chose not to adhere to the Code would be able to demonstrate to the Commission that its operations – including both broadcast and non-broadcast activities – otherwise served the public interest, convenience and necessity with respect to its local community during the license term.

This approach would recognize licensees’ public interest obligations and provide that the FCC, at renewal time, would be supplied with information the licensee deems appropriate to establish compliance with the Code and the licensee’s obligation to operate in the public interest.

The basic ingredients of the Public Interest Code of Conduct would include the following:

- During the thirty days prior to an election, television stations would provide for free a five-minute period each day between the hours of 5:00 p.m. and 11:35 p.m. for political discourse and for candidates to reach local voters. Stations would choose the candidates and races (federal, state and/or local) covered. In addition, stations would have the discretion to choose the formats for this discourse, subject to a minimum one minute duration for the candidates to appear on-screen and an audio minimum of fifty percent of the airtime.
- Television stations would provide programming explaining our civic responsibilities and political process. This information would be presented, designed, and structured so that it is accessible, available, understandable and free.
- Television stations would provide programming reflecting and addressing the diverse interests of the viewers within their local communities – with emphasis on the particular cultures, heritages, individuality, and demographics of all segments of the local population.
- Television stations would serve their communities through involvement in local community activities such as sponsorship of charity fundraisers, visits to schools, and on-air coverage of important events in the community (*e.g.*, a local parade, a local high school football game). Stations also would serve their communities through the broadcast of public service announcements and children’s, religious, educational, and cultural programming.

The Communications Act grants broadcast licensees the responsibility to serve the public interest, convenience and necessity within their service areas and the opportunity to use their discretion in determining how to fulfill these responsibilities. Accordingly, under this Code, television stations choosing to multiplex their DTV signals should have the flexibility to determine the appropriate level and scheduling of such public interest programming and to determine whether such programming will be aired on one or more of their digital program streams.

As the Gore Commission noted in its report to the Commission, it is imperative to preserve the benefits of free over-the air-broadcast television. This proposal not only would help preserve the system of free over-the-air broadcasting, it would do so by honoring the First Amendment rights of broadcasters, fulfilling the need for public interest regulation by the Commission, and requiring that broadcasters' digital facilities serve their entire communities. Accordingly, Paxson submits that the establishment of a voluntary Code of Conduct would yield the demonstrable public interest benefits sought by the Commission without unduly burdening the Commission's resources or the ability of the television broadcasting industry to compete in today's marketplace.

Respectfully submitted,

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March 27, 2000